srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2068 OF 2007.

Sameer ABdul Kadar Shaikh. ..Petitioner.

V E R S U S

P.S.N.Rao & Ors. ..Respondents.

Mr. T. D. Deshmukh for the petitioner.

Mr. N. R. Prajapati for the respondent nos. 1, 2, 4 & 5.

Mr.C.R.Sonawane, A.G.P. for the State - respondent -3.

CORAM: S.B.MHASE & D.G.KARNIK,JJ.

DATE : OCTOBER 22, 2007.

P.C.

1. Heard. By this petition the petitioner seeks a mandamus to appoint him to the post of a peon in the office of the respondent no.1 - Botanical Survey of India. Counsel for the petitioner invited our attention to the letter dated 23rd March 2007 issued by the Deputy Director, Headquarters to the Joint Director, Western Circle, Botanical Survey of India, Pune approving the filling up of the vacant post of peon. Learned counsel for the petitioner submitted that since the appointment has been approved by the Head of Office, Western Circle, the

respondent no.1 who is the Joint Director ought to have made the appointment of the petitioner to the said post.

2. It is well settled position in law that no mandamus can be issued directing the employer to appoint a person even if the person's name appears in the select list. Untill the employer decides to fill up the post and issues an appointment order it can retract the decision and decide not to make any appointment unless a statute or a statutory rule provides otherwise. In the circumstances mandamus cannot be issued.

3. From the affidavit-in-reply we notice that presently there is a ban for making the appointments. In the circumstances the Joint Director was right in not issuing the appointment letter. The petition is dismissed summarily.

(D.G.KARNIK, J.) **(S.B.MHASE, J.)**